

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

DAVID HEIER,

Plaintiff and Appellant,

v.

FIRE INSURANCE EXCHANGE,

Defendant and Respondent.

B288999

(Los Angeles County  
Super. Ct. No. BC579969)

APPEAL from a judgment of the Superior Court of  
Los Angeles County. Maren E. Nelson, Judge. Affirmed.

Blood Hurst & O'Reardon, Timothy G. Blood, Leslie E.  
Hurst, and Paula R. Brown; Robbins Arroyo, Brian J. Robbins,  
Kevin A. Seely, and Ashley R. Rifkin for Plaintiff and Appellant.

Norton Rose Fulbright, Peter H. Mason and Eric A. Herzog  
for Defendant and Respondent.

In this insurance coverage action involving a condominium owner's property insurance policy, plaintiff and appellant David Heier (plaintiff) appeals from the summary judgment entered in favor of defendant and respondent Fire Insurance Exchange (FIE). We affirm the judgment.

## **BACKGROUND**

### **The policy**

FIE issued a townhouse/condominium owners policy to plaintiff insuring a condominium in Palm Springs, California. The policy provided coverage for, among other things, personal property (Coverage C) in the amount of \$50,000.

### **Endorsement J6071**

The policy also provided, pursuant to Endorsement J6071,<sup>1</sup> "Unit Owner's Building Property" coverage, as follows:

"8. *Unit Owner's Building Property*. If Coverage A is not insured in this policy,<sup>2</sup> we cover:

"A. your interest in property within your unit that is not described as 'Common Property' in the **Association's**<sup>3</sup> covenants. We insure for accidental direct physical loss to such properties subject to all the exclusions and conditions applicable to Section I of this policy.

---

<sup>1</sup> Endorsement J6071 amended the policy by deleting and replacing item 8 under Section I – Property, Additional Coverages, with the terms of the endorsement.

<sup>2</sup> Because the policy insured a condominium unit, it provided no coverage for the dwelling itself (referred to in the policy as Coverage A).

<sup>3</sup> "Association" is defined in the policy as "the membership of all unit owners and the managing body of the condominium or townhouse development."

“Included in this coverage are:

“1. interior non-bearing wall and partitions inside your unit.

“2. equipment and appliances used in the service of your residence while located inside your unit.

“3. additions and alterations comprising part of the building within the unfinished interior surface of the perimeter walls, floors and ceiling of each individual unit.

“Property insured in the **Association’s** insurance policy is not covered under this policy.

“[¶] . . . [¶]

“We will pay up to \$2,000 or 10% of Coverage C, whichever is larger, as a total limit for all of the Unit Owner’s Building Property Coverages on any one loss.”

The policy, as amended by Endorsement J6071, provided coverage for Unit Owner’s Building Property in the initial dollar amount of \$5,000 (10% of \$50,000, the limit for Coverage C).

#### **Endorsement E6161**

Plaintiff paid an additional premium for Endorsement E6161, which increased the limit for his Unit Owner’s Building Property Coverage by an additional \$30,000. Endorsement E6161 provides:

“For an additional premium, items below under Section I - Property . . . are increased by the amounts shown below:

“SECTION I – PROPERTY                      INCREASE IN LIMIT

“[¶] . . . [¶]

“Item 8 - Unit Owners Building  
Property (Condominium Owners)    \$30,000”

Endorsements E6161 and J6071 together specified a \$35,000 policy limit for Unit Owner’s Building Coverage, calculated by adding the baseline limit of \$5,000 (10% of Coverage C) to the \$30,000 of additional coverage provided by Endorsement E6161.

#### **Loss settlement provision**

The policy contains a loss settlement provision that states that covered losses for certain types of property, including wall-to-wall carpeting, will be settled at actual cash value, defined in the policy as “fair market value of the property at the time of loss.” The loss settlement provision states in relevant part:

#### **“Property Other Than Buildings.**

“Covered loss to the following types of property will be settled at **Actual Cash Value**:

“(1) Personal property and structures that are not considered buildings.

“(2) Carpeting, including wall-to-wall carpeting, domestic appliances, awnings, outdoor equipment and antennas, all whether or not attached to buildings.

“Payment will not exceed the amount actually needed to repair or replace the damaged property, or the limit of insurance applying to the property, whichever is less.”

## **Endorsement E6120**

Plaintiff paid an additional premium for Endorsement E6120, which states in relevant part:

### **“CONTENTS REPLACEMENT COST COVERAGE**

#### **“PERSONAL PROPERTY**

“For an additional premium, insurance applicable to the following property is extended to include the full cost of repair or replacement without deduction for depreciation:

“1. property covered under Coverage C - Personal Property.

“2. carpeting, domestic appliances, awnings, outdoor equipment and antennas, all whether or not attached to buildings.

“Our liability for loss on any one item or items of personal property under this policy shall not exceed the smallest of the following amounts:

“1. 400% of the actual cash value at time of loss.

“2. Replacement cost at the time of loss.

“3. The full cost of repair of personal property.

“4. The limit of liability of Coverage C.

“5. Any special Limits stated in the policy or Declarations.

“[¶] . . . [¶]

“This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.”

### **Plaintiff's claim**

Plaintiff suffered a covered loss during the November 2013 to November 2014 policy period and sustained damage to his wall-to-wall carpeting, among other items. The replacement cost of the carpet was \$2,441.93, plus installation.

FIE paid plaintiff the \$35,000 policy limit for Unit Owner's Building Property coverage.<sup>4</sup> Plaintiff claimed, however, that Endorsement E6120 required FIE to pay, in addition to the \$35,000 limit for Unit Owner's Building Property coverage, the \$2,144.93 replacement cost for his carpet.

### **PROCEDURAL HISTORY**

Plaintiff filed this action against FIE in April 2015, alleging causes of action for breach of contract, unlawful business practices in violation of Business and Professions Code section 17200, false promise, and declaratory relief. His complaint also alleged class claims on behalf of similarly situated persons.<sup>5</sup> The parties filed cross-motions for summary judgment or summary adjudication, and both motions were heard on December 13, 2017.

On December 18, 2017, the trial court entered an order denying plaintiff's motion for summary adjudication and granting FIE's motion for summary judgment. Judgment was subsequently entered in FIE's favor, and this appeal followed.

---

<sup>4</sup> FIE also paid plaintiff the \$50,000 policy limit for loss to personal property under Coverage C of the policy. The parties do not dispute that plaintiff's carpeting is not personal property under Coverage C of the policy.

<sup>5</sup> The trial court issued an order denying plaintiff's request for class certification. That order is not at issue in this appeal.

## DISCUSSION

### I. Standard of review

The standard of review for an order granting or denying a motion for summary judgment is de novo. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.) The trial court's stated reasons for granting summary adjudication are not binding on the reviewing court, which reviews the trial court's ruling, not its rationale. (*Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 878.)

### II. Applicable legal principles

“Interpretation of an insurance policy is a question of law and follows the general rules of contract interpretation. [Citation.] “The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the ‘mutual intention’ of the parties. ‘Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. [Citation.] Such intent is to be inferred, if possible, solely from the written provisions of the contract. [Citation.] The “clear and explicit” meaning of these provisions, interpreted in their “ordinary and popular sense,” unless “used by the parties in a technical sense or a special meaning is given to them by usage” [citation], controls judicial interpretation. [Citation.]’ . . .” [Citation.]’ [Citation.]” (*TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27.) Policy provisions must be interpreted in context, giving effect to every part of the policy with “each clause helping to interpret the other.” (*Palmer v. Truck Ins. Exchange* (1999) 21 Cal.4th 1109, 1115 (*Palmer*).)

If the language of the policy is clear and explicit, it governs. (*Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal.4th 857, 868.) ““A policy provision will be considered

ambiguous when it is capable of two or more constructions, both of which are reasonable.” [Citations.] The fact that a term is not defined in the policies does not make it ambiguous. [Citations.] Nor does “[d]isagreement concerning the meaning of a phrase,” or “the fact that a word or phrase isolated from its context is susceptible of more than one meaning.” [Citation.] “[L]anguage in a contract must be construed in the context of that instrument as a whole, and in the circumstances of that case, and cannot be found to be ambiguous in the abstract.” [Citation.] . . .’ [Citation.]” (*Powerine Oil Co., Inc. v. Superior Court* (2005) 37 Cal.4th 377, 390-391 (*Powerine*)).

The insured bears the burden of bringing a claim within the basic scope of coverage of a policy’s insuring agreement, and a court will not indulge a forced interpretation of the insuring agreement to bring a claim within the scope of its coverage. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 16.)

### **III. Endorsement E6120**

Endorsement E6120 extends “Contents Replacement Cost Coverage” for carpeting, personal property, and other specified items “to include the full cost of repair or replacement without deduction for depreciation.” Absent this endorsement, covered losses to those types of property would be settled, under the loss settlement provision of the policy, at actual cash value, defined as the “fair market value of the property at the time of loss.”

The purpose of replacement cost coverage, such as that provided by Endorsement E6120, is “to compensate the insured for the shortfall in coverage that results from rebuilding [or replacing damaged items] under a policy that pays only for actual cash value (i.e., reflecting property in a depreciated condition).” (Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2018) ¶ 6:359.1, p. 6B-82.) “Under a replacement cost policy, the measure of indemnity is the amount it would cost



the insured to repair, rebuild, or replace the damaged property, *without any deduction for depreciation.*” (*Id.* at ¶ 6:359.2, p. 6B-83.) Replacement cost coverage “necessarily places the insured in a better position than payment of actual cash value, since there is no deduction for depreciation.” (*Id.* at ¶ 359.1, pp. 6B-82, 6B-83.)

There are three main types of replacement cost coverage: (1) replacement cost, (2) extended replacement cost, and (3) guaranteed replacement cost. (Croskey, Cal. Practice Guide: Insurance Litigation, *supra*, ¶ 6:359.2, p. 6B-83.) Replacement cost coverage provides for the cost to repair or replace the damaged property up to the stated policy limit. (*Id.* at ¶ 6:359.3, p. 6B-83.) “Extended replacement cost coverage provides indemnity up to a specified percentage (e.g., 10%) or specific dollar amount above the policy limit.” (*Id.* at ¶ 6:359.4, p. 6B-83, *italics omitted.*) Guaranteed replacement cost coverage covers the full cost to repair or replace the damaged property, without regard to the stated policy limit. (*Id.* at ¶ 6:359.5, p. 6B-83.)

Endorsement E6120 provides replacement cost coverage, and not, as plaintiff contends, guaranteed replacement cost coverage for his carpeting. There is no language in Endorsement E6120 or elsewhere in the policy that guarantees replacement cost coverage in excess of the policy limits. (Compare *Everett v. State Farm General Ins. Co.* (2008) 162 Cal.App.4th 649, 659-660 [policy included no language guaranteeing replacement cost coverage] with *Desai v. Farmers Ins. Exchange* (1996) 47 Cal.App.4th 1110, 1116 [policy stated “If a Replacement Cost provision forms a part of this policy, we guarantee that the limits of insurance meet the replacement cost requirements”].)

Endorsement E6120 contains no language that increases the policy limits. The absence of such language is significant, because other endorsements to the policy increase limits by expressly stating so. Endorsement E6161, for example, states

that certain “[c]overages are increased by the amounts shown” and specifies the amounts of the “Increase In Limit.”

Endorsement E6120 contains no language that supersedes any applicable policy limits. Rather, the last sentence of the endorsement states that “[i]t is otherwise subject to all other terms of this policy.” Endorsement E6120 must therefore be read together with Endorsements J6071 and E6161, which impose a \$35,000 limit on Unit Owner’s Building Property coverage. (*Palmer, supra*, 21 Cal.4th at p. 1115 [insurance policy provisions must be interpreted in context, giving effect to every part of the policy].)

Endorsement E6120, read together with the other provisions of the policy, is not ambiguous. Under the plain language of the policy, FIE’s obligation to indemnify plaintiff for the cost of replacing his indoor carpeting is subject to the \$35,000 policy limit. (*Powerine, supra*, 37 Cal.4th at pp. 390-391.)

#### **IV. Endorsement J6071 covers plaintiff’s carpeting**

We reject plaintiff’s argument that the \$35,000 policy limit set by Endorsements J6071 and E6161 does not apply to his indoor carpeting because carpeting is not “Unit Owner’s Building Property.” The term “Unit Owner’s Building Property” is not specifically defined in Endorsements J6071 or E6161 or anywhere else in the policy. Rather, Endorsement J6071 broadly describes the property covered as “your interest in property within your unit that is not described as ‘Common Property’ in the Association’s covenants.” Plaintiff does not contend the carpeting in his unit is “Common Property.” Endorsement J6071 further states: “Included in this coverage are . . . additions and alterations comprising part of the building within the unfinished interior surface of the perimeter walls, floors and ceiling of each individual unit.” The wall-to-wall carpeting in plaintiff’s unit comes within this broadly inclusive coverage.

That Endorsement J6071 does not specifically identify carpeting, or the other four types of property listed in Endorsement E6120 (domestic appliances, awnings, outdoor equipment and antennas) does not remove plaintiff's indoor carpeting from the scope of coverage or the coverage limits provided by Endorsements J6071 and E6161. Because the broadly inclusive language of Endorsement J6071 encompasses interior wall-to-wall carpeting, a specific listing is unnecessary.

In contrast, Endorsement E6120 contains no similar broadly inclusive language. Rather, Endorsement E6120, as relevant here, extends replacement cost coverage for only the five types of non-personal property listed in the endorsement -- carpeting, domestic appliances, awnings, outdoor equipment and antennas.<sup>6</sup> That specific listing is necessary because the same five types of property are identified in the loss settlement section of the policy as types of property that, but for Endorsement E6120, would be settled at actual cash value.

Plaintiff's indoor carpeting is covered under Endorsement J6071 and is subject to the policy's \$35,000 limit for Unit Owner's Building Property coverage.

The trial court did not err by granting summary judgment in FIE's favor.

---

<sup>6</sup> Endorsement E6120 also extends replacement cost coverage for personal property covered under the policy's Coverage C. As discussed, the parties do not dispute that plaintiff's indoor carpeting is not personal property under Coverage C of the policy.

### **DISPOSITION**

The judgment is affirmed. FIE is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
ASHMANN-GERST